

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MON RITH, DALIS SUN, and SUPER  
VIDEO INC. doing business as GROCERY  
PLUS,

Plaintiffs,

v.

UNITED STATES OF AMERICA

Defendant.

No. 2:19-cv-01582-BJR

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

STIPULATED PROTECTIVE ORDER - 1  
Case No. C19-1582-BJR

UNITED STATES ATTORNEY  
700 STEWART STREET, SUITE 5220  
SEATTLE, WASHINGTON 98101  
(206) 553-7970

1 2. "CONFIDENTIAL" MATERIAL

2 "Confidential" material shall include the following documents and tangible things  
3 produced or otherwise exchanged:

- 4 • Applicable portions of the Administrative Record containing information exempt  
5 from disclosure under the Food and Nutrition Act of 2008;
- 6 • Governmental records containing information exempt from disclosure under the  
7 Food and Nutrition Act of 2008;
- 8 • Applicable portions of records prepared in relation to the USDA investigation of  
9 plaintiff containing information exempt from disclosure under the Food and  
10 Nutrition Act of 2008;
- 11 • Portions of deposition transcripts containing information exempt from disclosure  
12 under the Food and Nutrition Act of 2008;
- 13 • Any financial information not publicly filed with any federal or state regulatory  
14 authority;
- 15 • Information pertaining to SNAP households, including but not limited to the  
16 household's SNAP card number, demographic information, household size, and  
17 names of authorized users in the household;
- 18 • Comparison store information, including sales data, inventory records, operational  
19 details and other identifying information; and
- 20 • Information pertaining to FNS policies and procedures and ALERT operational  
21 information whose dissemination would compromise the ability of the USDA to  
22 discover illegal EBT activity and allow retailers to avoid detection, including but  
23 not limited to policy memoranda, pertinent portions of the Standard Operating  
24 Procedures, and other program details, guidelines, thresholds or information.

21 3. SCOPE

22 The protections conferred by this agreement cover not only confidential material (as  
23 defined above), but also (1) any information copied or extracted from confidential material; (2) all  
24 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
25 conversations, or presentations by parties or their counsel that might reveal confidential material.

1 However, the protections conferred by this agreement do not cover information that is in  
2 the public domain or becomes part of the public domain through trial or otherwise.

3 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
5 or produced by another party or by a non-party in connection with this case only for prosecuting,  
6 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
7 the categories of persons and under the conditions described in this agreement. Confidential  
8 material must be stored and maintained by a receiving party at a location and in a secure manner  
9 that ensures that access is limited to the persons authorized under this agreement.

10 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
11 by the court or permitted in writing by the designating party, a receiving party may disclose any  
12 confidential material only to:

13 (a) the receiving party's counsel of record in this action, as well as employees  
14 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

15 (b) the officers, directors, and employees (including in house counsel) of the  
16 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
17 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
18 designated;

19 (c) experts and consultants to whom disclosure is reasonably necessary for this  
20 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

21 (d) the court, court personnel, and court reporters and their staff;

22 (e) copy or imaging services retained by counsel to assist in the duplication of  
23 confidential material, provided that counsel for the party retaining the copy or imaging service  
24 instructs the service not to disclose any confidential material to third parties and to immediately  
25 return all originals and copies of any confidential material;



1 (f) during their depositions, witnesses in the action to whom disclosure is  
2 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
3 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
4 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
5 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
6 under this agreement;

7 (g) the author or recipient of a document containing the information or a  
8 custodian or other person who otherwise possessed or knew the information.

9 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
10 referencing such material in court filings, the filing party shall confer with the designating party,  
11 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
12 remove the confidential designation, whether the document can be redacted, or whether a motion  
13 to seal or stipulation and proposed order is warranted. During the meet and confer process, the  
14 designating party must identify the basis for sealing the specific confidential information at issue,  
15 and the filing party shall include this basis in its motion to seal, along with any objection to sealing  
16 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and  
17 the standards that will be applied when a party seeks permission from the court to file material  
18 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the  
19 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.  
20 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with  
21 the strong presumption of public access to the Court's files.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
24 or non-party that designates information or items for protection under this agreement must take  
25 care to limit any such designation to specific material that qualifies under the appropriate  
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standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the

transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires



1 a face-to-face meeting or a telephone conference.

2       6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
3 intervention, the designating party may file and serve a motion to retain confidentiality under Local  
4 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
5 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
6 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
7 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain  
8 the material in question as confidential until the court rules on the challenge.

9 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
10 LITIGATION

11 If a party is served with a subpoena or a court order issued in other litigation that compels  
12 disclosure of any information or items designated in this action as "CONFIDENTIAL," that party  
13 must:

14           (a) promptly notify the designating party in writing and include a copy of the  
15 subpoena or court order;

16           (b) promptly notify in writing the party who caused the subpoena or order to  
17 issue in the other litigation that some or all of the material covered by the subpoena or order is  
18 subject to this agreement. Such notification shall include a copy of this agreement; and

19           (c) cooperate with respect to all reasonable procedures sought to be pursued by  
20 the designating party whose confidential material may be affected.

21 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
23 material to any person or in any circumstance not authorized under this agreement, the receiving  
24 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,  
25 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the  
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1 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,  
 2 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be  
 3 Bound" that is attached hereto as Exhibit A.

4 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
 5 MATERIAL

6 When a producing party gives notice to receiving parties that certain inadvertently  
 7 produced material is subject to a claim of privilege or other protection, the obligations of the  
 8 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
 9 is not intended to modify whatever procedure may be established in an e-discovery order or  
 10 agreement that provides for production without prior privilege review. The parties agree to the  
 11 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

12 10. NON TERMINATION AND RETURN OF DOCUMENTS

13 Within 60 days after the termination of this action, including all appeals, each receiving  
 14 party must return all confidential material to the producing party, including all copies, extracts and  
 15 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

16 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
 17 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
 18 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work  
 19 product, even if such materials contain confidential material.

20 The confidentiality obligations imposed by this agreement shall remain in effect until a  
 21 designating party agrees otherwise in writing or a court orders otherwise.

22  
 23 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

24 DATED: February 26, 2020

25 /s/ Bardi D. Martin  
 Bardi D. Martin, WSBA #39077  
 Attorney for Plaintiffs

26 STIPULATED PROTECTIVE ORDER - 8  
 Case No. C19-1582-BJR

UNITED STATES ATTORNEY  
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1 DATED: February 26, 2020

/s/ Ashley C. Burns  
Ashley C. Burns, NY Bar #5186382  
Attorney for Defendant

26 STIPULATED PROTECTIVE ORDER - 9  
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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
3 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or  
4 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
5 documents, including the attorney-client privilege, attorney work-product protection, or any other  
6 privilege or protection recognized by law.

7  
8 DATED: February <sup>14</sup>27, 2020

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11 BARBARA L. ROTHSTEIN  
12 United States District Court Judge  
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court for the Western District of Washington on [date] in the  
case of *Mon Rith et al. v. United States*, Case No. 2:19-CV-01582-BJR. I agree to comply with  
and to be bound by all the terms of this Stipulated Protective Order and I understand and  
acknowledge that failure to so comply could expose me to sanctions and punishment in the nature  
of contempt. I solemnly promise that I will not disclose in any manner any information or item  
that is subject to this Stipulated Protective Order to any person or entity except in strict compliance  
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_